

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Criminal Appeal No. 1121 of 2001

Old No. 3100 of 1986

Court No.3

State of U.P.

.....Appellant.

Versus

Bhupendra Singh and two others

.....Respondents.

Hon'ble Irshad Hussain, J.

This is an appeal against the judgment and order dated 5-2-1986 passed by the then Sessions Judge Pithoragarh in Session Trial No. 7/1986 acquitting the respondents-accused (hereinafter referred to as the accused) of the charge U/s 307/34 I.P.C.

The accused were prosecuted along with another culprit Lalit Singh S/o Gopal Singh for an offence punishable U/s 307/34 I.P.C. for having assaulted injured Ram Singh (P.W.3) and Madan Singh (P.W.5) at about 12:30 p.m. on 7-3-1985 in front of the house of the accused in village Lunthura situated adjoining to the town of Pithoragarh. The prosecution case was the Lalit Singh S/o Gopal Singh carrying a sword came at the house of the victims and he was followed by his brother accused Bhupendra Singh alias Bhuwan, the accused Kedar Singh and Lalit Singh S/o Trilok Singh then carrying Lathis. On account of previous enmity Lalit Singh S/o Gopal Singh all of a sudden gave a sword blow at the neck of injured Ram Singh, who warded off the blow by his left hand and in the process received incised injury on the left elbow-joint. Madan Lal (P.W.5) an uncle of Ram Singh came there to rescue his nephew but he was assaulted by these three accused. On alarm being raised, other witnesses including Narendra Singh (P.W.4) reached the scene of the occurrence. The assailants then fled away from there.

F.I.R. of the case, Ex.Ka.10, was registered the same day at 2.10 p.m. and injured was sent for medical examination. On completion of the investigation charge sheet was submitted against these accused and one another.

At the trial prosecution examined six witness including the two injured named above and eye witness Narendra Singh (P.W.4). They narrated the prosecution version as stated above. P.W.2 , Dr. G.K. Sharma Medical Officer of District Hospital Pithoragarh has examined both the injured and prepared injury reports, Ex.Ka.2 and, Ex.Ka.3 of Ram Singh and Madan Singh respectively and he gave evidence to prove the injury reports. P.W.6, S.I. Shyam Singh is Investigating Officer of the case and he proved various steps in regard to the investigation in the matter and he also proved charge sheet, Ex.K.a9. The learned Sessions Judge made appreciation of the evidence on record and found the evidence reliable to the extent that the culprit Lalit Singh S/o Gopal Singh assaulted injured Ram Singh causing him injuries of sword and thereby found the charge U/S 307 I.P.C. proved against him beyond doubt and convicted him and sentenced him to five years' R.I. However it was found that that prosecution has utterly failed to establish that three accused (respondents) participated in the commission of the offence in furtherance of the common intention with culprit Lalit Singh S/o Gopal Singh to cause hurt to Ram Singh and Madan Singh therefore they were no held guilty and acquitted of the charge U/S 307/34 I.P.C. Aggrieved by their acquittal this appeal has been filed by the Government.

Heard learned A.G.A. for the State and Sri P.S. Adhikari learned counsel for the respondents and have carefully perused the record.

Learned A.G.A. pointed out that both the injured Ram Singh and Madan Singh and eye witness Narendra Singh (P.W.4) have stated in one voice that these accused also participated in the assault and therefore the learned Sessions Judge fell in error in coming to the conclusion that they have not committed the offence with which they were charged in the case. On the other hand learned counsel for the accused drew the attention to the evidence of witnesses and the appreciation made by the learned Sessions Judge with regard to the Injuries sustained by the injured Madan Singh and submitted that the evidence has rightly been disbelieved about the participation of these accused in the incident of assault.

Having gone through the evidence of the case I find myself in agreement with the conclusion as arrived at by the learned Sessions Judge.

The reason is that according to the prosecution injured Madan Singh came at the scene of the occurrence later on to rescue his nephew Ram Singh. The evidence of both the injured and Narendra Sing is to the effect that culprit Lalit Singh S/o Gopal Singh had already assaulted injured Ram Singh before some one could reach there at the place of the occurrence. In a situation like this it was highly improbable that injured Madan Singh reached at the spot and these accused assaulted him with Lathis. Not only the presence of Madan Singh at the scene of occurrence do not stand established by the evidence of the three witnesses but the medical evidence also is in conflict with the claim made by these witnesses in oral evidence. According to the Medical Officer (injury report, Ext.Ka.3) Madan Singh was found to have sustained three lacerated wounds and one contused abrasion over left fore head near eye-brow within a radius of about 6 c.m. The claim made was that all the four assailants had wielded Lathis, blows of which landed at the person of said Madan Singh. Considering this aspect learned Sessions Judge observed that it does not appeal to prudence that all the assailants have given blows one after the other at one and the same place on the person of the injured Madan Singh. The seat of the injury in the face of the claim made by the witnesses clearly ruled out the possibility of these injuries being sustained by the injured Madan Singh in the manner as alleged. Therefore, learned Sessions Judge was fully justified in coming to the conclusion that injured Madan Singh was not present at the scene of the occurrence and he has not sustained injuries at the hands of the accused in the incident. The conclusion of the learned Session Judge is based on proper and fair perusal of the evidence on record which does not call for any interference. In other words the evidence of the prosecution was not sufficient to bring home guilt of the accused and they were rightly held not guilty and acquitted of the charge U/S 307/34 I.P.C.

For the reasons aforesaid, there being no force in this appeal, the same is hereby dismissed.

(Irshad Hussain, J.)

Dated: 7-9-2003

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